

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., <i>et al.</i>)	
)	
Defendants.)	
)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO EXCLUDE
DEFENDANTS' EXPERT REPORT REGARDING THE FEASIBILITY OF
PLAINTIFFS' HYPOTHETICAL ALUM REMEDIATION STRATEGY (Dkt. No. 2242)**

EXHIBIT 9

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, et al.,)
4)
5 Plaintiffs,)
6)
7 v.) 05-CV-0329 GKF-PJC
8)
9 TYSON FOODS, INC., et al.,)
10)
11 Defendants.)
12)

13 VIDEOTAPE DEPOSITION OF: WILLIAM MICHAEL HANEMANN
14 May 5, 2009
15

16 PURSUANT TO NOTICE, the videotape
17 deposition of WILLIAM MICHAEL HANEMANN was taken on
18 behalf of the Defendant Cargill, Inc., at
19 1700 Lincoln Street, Suite 3200, Denver, Colorado
20 80203, on May 5, 2009, at 8:32 a.m., before Marchelle
21 Hartwig, Certified Shorthand Reporter and Notary
22 Public within Colorado.
23
24
25

08:33:24 1 Cal-Maine defendants.

08:33:24 2 MR. FREEMAN: Bruce Freeman for Simmons

08:33:24 3 on the phone.

08:33:24 4 THE VIDEOGRAPHER: And will the reporter
08:33:24 5 please swear in the witness.

08:33:24 6 WILLIAM MICHAEL HANEMANN,

08:54:59 7 having been first duly sworn to state the whole truth,

08:54:59 8 testified as follows:

08:33:37 9 MR. DEIHL: Before we get going on the
08:33:41 10 deposition, I had e-mailed Claire and have told others
08:33:45 11 of you that there is a funeral this morning that I
08:33:46 12 need to attend. It's going to be at 10:00 this
08:33:48 13 morning, so I'm going to have to break the deposition
08:33:52 14 at about ten minutes to 10, attend the funeral, and
08:34:00 15 then we'll start up after the funeral.

08:34:01 16 MS. XIDIS: I'm sorry, I didn't get that
08:34:03 17 e-mail. Do you have an estimated re-starting time
08:34:07 18 or --

08:34:07 19 MR. DEIHL: Yeah. I estimate it won't
08:34:07 20 take longer than an hour.

08:34:11 21 MS. XIDIS: Okay.

08:34:11 22 EXAMINATION

08:34:11 23 BY MR. DEIHL:

08:34:13 24 Q. Would you please state your name for the
08:34:15 25 record.

09:30:07 1 question was that I was answering. I said that the
09:30:11 2 impairment of water quality affected periods,
09:30:13 3 particularly when recreation would occur, and I
09:30:18 4 thought of that as the late spring and summer, and
09:30:22 5 then I was describing these two statements which talk
09:30:24 6 about impairment during that period.

09:30:30 7 And, for example, to continue with the
09:30:31 8 last sentence on page A-10, which states that, "In the
09:30:35 9 winter, the water is clearer and people can usually
09:30:39 10 see down about 10 feet." The point I'm making is not
09:30:43 11 that there is no recreation in the winter, but my
09:30:45 12 understanding would be that the summer would be a more
09:30:48 13 important recreation period than the winter.

09:30:52 14 Q. (BY MR. DEIHL) These statements that
09:30:52 15 you've highlighted on page A-10, your basis for those
09:31:00 16 statements is the natural scientists?

09:31:01 17 A. Yes.

09:31:07 18 Q. Do you know what basis the natural
09:31:09 19 scientists had for determining conditions in 1960?

09:31:20 20 A. The short answer is no.

09:31:35 21 Q. Who made the decision to use a contingent
09:31:39 22 valuation methodology in connection with this site?

09:31:43 23 A. The team made that recommendation to the
09:31:46 24 client, and the client had to accept that
09:31:50 25 recommendation and did so.

09:32:03 1 Q. How did you select 1960 as the baseline
09:32:09 2 date?

09:32:13 3 A. That -- so if you look at page A-8 of
09:32:20 4 this base questionnaire, the top two lines state, "In
09:32:24 5 the late 1950s and early 1960s, the water in the river
09:32:31 6 was clear most of the time," and so on. So baseline
09:32:33 7 is actually the late 1950s and early 1960s. And then
09:32:37 8 for -- to keep the wording simple, later on in the
09:32:39 9 questionnaire we say around 1960, but we are referring
09:32:45 10 to that period in the late 1950s and early 1960s.

09:32:54 11 Making that period, I've just referred to
09:33:00 12 the baseline, was a decision based on information that
09:33:05 13 the team received from the natural scientists through
09:33:11 14 their communication with Dr. Richard Bishop as the
09:33:15 15 intermediary.

09:33:18 16 Q. Going back to page A-10, how did you
09:33:22 17 represent the seasonal differences between the amount
09:33:26 18 of algae, say, in March through June and the amount in
09:33:30 19 December in the photographs that were used in the
09:33:35 20 survey?

09:33:37 21 A. I don't have my copy with the
09:33:41 22 photographs, so maybe you could just let me -- well, I
09:33:46 23 think I can answer that. The photographs, which
09:33:50 24 appear on A-42, I believe, and page A-43, the
09:34:03 25 photographs show -- let's say A-43 how the lake used

09:39:18 1 and to pave the way for the writing of the report
09:39:22 2 while the survey was still in the field so the data
09:39:24 3 analysis could be conducted within the limited time as
09:39:31 4 the data came in and the report could be composed
09:39:37 5 within the given time frame.

09:39:41 6 Q. (BY MR. DEIHL) How did you go about
09:39:43 7 developing and testing the survey instrument? First,
09:39:46 8 let me ask the first question. How did you go about
09:39:48 9 developing the survey instrument?

09:39:52 10 A. That's described in this report, so . . .
09:40:13 11 Well, development took place between October 2006 and
09:40:18 12 August 2008 reading from page 3-1, and it involved a
09:40:26 13 series of steps, including focus groups, one-on-one
09:40:33 14 interviews, pretests, and pilot tests.

09:40:41 15 Q. How did you arrive at the factual
09:40:48 16 information that was included in the survey
09:40:52 17 instrument?

09:41:00 18 A. Now, by factual information, I should
09:41:05 19 make a distinction between two sets of facts that are
09:41:11 20 presented in the instrument. One is a set of facts
09:41:15 21 regarding the injury. A second is a set of facts
09:41:20 22 regarding the mechanism by which the injury can be
09:41:24 23 eliminated; that is the alum program.

09:41:26 24 The facts regarding the injury came from
09:41:30 25 the natural scientists working for the state,

11:43:13 1 A. "One of the state's better-known fishing
11:43:16 2 areas, this 1,190-acre preserve sits beside a
11:43:18 3 pleasantly scenic cove of 12,500-acre Tenkiller
11:43:24 4 Reservoir."

11:43:26 5 Q. Thank you. As you conducted this survey
11:43:39 6 of respondents regarding Tenkiller Lake and the
11:43:41 7 Illinois River, how did you assure that the
11:44:00 8 information you were providing to the respondents in
11:44:01 9 the surveyed documents was factually accurate?

11:44:07 10 A. As I've mentioned before, it's important
11:44:09 11 to distinguish the two sorts of information;
11:44:11 12 information about the injury and information about the
11:44:16 13 mechanism that made it possible to eliminate the
11:44:18 14 injury at a cost.

11:44:22 15 With regard to information about the
11:44:26 16 injury, we -- the steps we took to assure the accuracy
11:44:35 17 of this information was both to collect information
11:44:39 18 from the scientists working for the state, the natural
11:44:43 19 scientists, and also to ask them to review the
11:44:46 20 specific information that was in the questionnaire.

11:44:50 21 Q. And I take it Dr. Bishop was the
11:44:52 22 primary --

11:45:00 23 A. Conduit.

11:45:00 24 Q. -- conduit between the team and the
11:45:01 25 natural scientists?